IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

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THE HON'BLE MR. JUSTICE M. THANIKACHALAM

CRL.O.P.No.34266 of 2003

K.R.N. Balamurugan ..Petitioner.

-Vs-

1. State of Tamilnadu rep. by
its Secretary, Home Dept.,
Fort St. George,
Chennai 600 004.

2. The Director General of Police,
Kamaraj Salai, Chennai-4.

3. The Superintendent of Police,
Dindigul District, Dindigul.

4. The Inspector of Police,
District Crime Branch,
Dindigul. ..Respondents.

Petition filed under Section 482 Cr.P.C. praying for the relief as
stated therein.

For petitioner : Mr. R. Kumar
Senior Counsel
for Mr. R. Loganathan

For respondents: Mr. A.N. Thambidurai
Government Advocate (Crl.side)

:O R D E R

The petitioner/complainant in Cr.No.260/2002 on the file of Kannivadi Police Station, now pending with the 4th respondent, not satisfied with the investigation, filed this application, for transfer of the case to C.B.C.I.D., Chennai, for further investigation.

2. The petitioner claims that he is the owner of 4.36 acres in Survey No.62/1 and 7.46 acres in Survey No.64, situated at Chattirapatti Village, under a registered sale deed dated 31.7.1996. When the petitioner

made preparation for obtaining a bank loan, by mortgaging the above said properties, he came to know that one Sahayanathan had sold a part of the properties as also 7/8th share in the well on the land, as if the properties were sold to him by the petitioner for Rs.1.79 lakhs on 12.7.2001. The sale deed dated 12.7. 2001 is a forged document, since the petitioner had not even seen Sahayanathan, nor did he sell the properties in his favour on 12.7.2001. Thus, having noticed a forged document, in respect of his properties, he preferred a complaint to the police and after persuasion or direction, a case was registered in Cr.No.260/2002 by Kannivadi Police Station, under Sections 363, 384, 419, 420, 465 and 471 I.P.C., which is being investigated by the fourth respondent. The accused in the said crime number are influential persons and the petitioner may not get proper justice, if the investigation is conducted by the 4th respondent. Thus apprehending, this petition is filed for transfer of investigation from 4th respondent to C.B.C.I.D, Chennai, for the purpose of impartial investigation and to file a final report.

3. The petition for transferring the investigation is opposed on various grounds.

4. The reasons alleged for transferring the investigation, as seen from the affidavit are, that the investigating agency without directing their attention to the established forgery, tried to hurriedly file a final report, since one of the accused happens to be the Joint Commissioner, H.R. & C.E., an influential person in the area, wielding or radiating influence. Under these circumstances, if the investigation is carried out by the 4th respondent, it may not be impartial is the further case of the complainant. To find out, whether is there any genuine grievance, for the petitioner to transfer the investigation and whether such a relief could be made at present under Section 48 2 Cr.P.C., we have to see the previous proceedings initiated by the petitioner, as well as the stage of the investigation.

5. The petitioner aggrieved by the slackness of the police, in not registering the case moved a petition before this Court under Section 482 Cr.P.C., seeking direction to take action on the complaint given by him in Cr.No.14766/2002. When the criminal original petition came up for hearing on 4.10.2002, on behalf of the police, it was reported that a case has been registered in Cr.No.260/2002 for the offences under Sections 363, 384, 419, 420, 465 and 471 I.P.C. and the matter is pending for investigation. Recording the statements of the learned Government Advocate, the criminal original petition was dismissed on 4.10.2002.

6. The petitioner once again moved the High Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India, praying for the issue of Writ of Mandamus, to transfer the investigation, pending on the file of the Station House Officer, Kannivadi Police Station, Dindigul District to the C.B. C.ID, Chennai. This Court while disposing of the said application has observed:

"In my opinion, these grounds by themselves may not be enough to transfer the investigation, that too, at this threshold stage from the file of the investigating police station to CBCID, Chennai."

However, considering the accusation made by the petitioner and in order to erase the apprehension in the mind of the petitioner, this Court had directed the Superintendent of Police, Dindigul District to monitor the investigation to be done by the Station House Officer, Kannivadi Police Station. In this view, the writ petition was disposed of on 3.12.2002. Thereafter alone, this petition is filed under Section 482 Cr.P.C.

7. From the proceedings initiated by the petitioner, as narrated above, it could be seen, that the petitioner had approached this Court, for relief under wider jurisdiction, viz., invoking Article 226 of the Constitution of India and in that writ petition, a finding is given, that the grounds alleged are not sufficient enough to transfer the investigation. The same grounds alone, in different forms, are alleged in this petition, invoking the inherent jurisdiction of this Court, under Section 482 Cr.P.C. In view of the admitted position, that the relief now claimed by the petitioner, was already negatived by this Court, I am of the view, that the subsequent petition invoking jurisdiction under Section 482 Cr.P.C., for transfer of investigation, is not at all maintainable and the petition deserves to be dismissed. Even otherwise, I find no sufficient reason, to transfer the case, to C.B.C.I.D., Chennai.

8. The case was registered in Cr.No.260/2002 at Kannivadi Police Station. Considering the sensitiveness raised by the petitioner and the persons involved in this case and also the serious allegations levelled, it seems, the investigation was entrusted with the District Crime Branch, Dindigul. In obedience to the direction given by this Court in W.P.No.43090/2002, the investigation was monitored by the Superintendent of Police. The 4th respondent, had examined a number of witnesses and came to the conclusion that on the date of the alleged execution of the forged document viz., 12.7.2001, the petitioner and his henchmen were also present in the registration office and on that basis, in the mind of investigation agency, a doubt had arisen, even the petitioner may be the cause, for such a forged document, though it is not the conclusion. This Court is not called upon to decide whether the investigation is proper or not. However, considering the facts and circumstances of the case, since the investigation failed to disclose, who had committed the forgery, a final report has been filed before the court concerned, informing that it is a mistake of fact, for which notice was also served to the complainant. Therefore, the petitioner has to work out his remedy, if any, under Section 200 Cr. P.C. or by filing a suit, to set aside the document, if he is so advised and I am unable to find any reason, much less valid reason, to order reinvestigation at this stage, because of the fact, investigation was already completed by the 4th respondent and a final report had already been filed.

9. The inherent jurisdiction of this Court under Section 482 Cr.P.C. is not a routine work, for mere asking, for anything and everything and it should come within the four walls of Section 482 Cr.P.C. In order to have a relief under Section 482 Cr.P.C., there must be an order under the Code, so as to invoke the inherent powers of the High Court, to make such orders as may be necessary, to give effect to any order under this Code, which is absent in this case. The second category is to prevent abuse of process of

any court, which is also not admittedly available to the petitioner, since his complaint is in the stage of investigation. The third category must be one coming under the heading "to secure the ends of justice". If at all, the claim of the petitioner could be brought in under the last limb of Section 482 Cr.P.C. and in my considered opinion, considering the facts and circumstances of the case, it is also not possible. As seen from the facts of the case, the matter more or less relates to civil nature between the close relatives of the practising advocate viz., the petitioner. Probably taking advantage of his position, he wants to settle the family dispute, invoking the inherent jurisdiction of this Court, which is not possible, since, his claim will not come to secure the ends of justice, which would be available to him, under the law, for that no inherent jurisdiction of the High Court could be invoked.

10. The learned counsel for the petitioner submits, that as per the investigation so far carried out, it is made out that the document dated 12.7.2001 is a forged document, which would indicate that the petitioner had not executed any sale deed, in favour of Sahayanathan, which should follow, he cannot validly execute a sale deed, that too on 6.7.2001. It seems, Sahayanathan claims that he had purchased the property from the property on 12.7.2001, which is proved to be a forged document. But it is not known, as rightly submitted by the learned counsel, how he had sold the property on 6.7.2001. Sahayanathan also had been examined, as seen from the final report, which was monitored by the Superintendent of Police also. As seen from the files produced for perusal, there is some inconsistency, which cannot be denied. But despite the fact, number of witnesses have been examined, the police is unable to fix, who had committed the forgery in executing the sale deed dated 12.7.2001, and in this view alone, they have closed the case as mistake of fact, though the petition for transfer of investigation is pending before this Court, since it seems there was no stay. It is not for the Court at this stage, to find out the correctness of investigation. As such, the investigation has been completed and under the change of circumstances, even assuming Section 482 Cr. P.C. could be invoked, no question of transfer of investigation arises. The power vested with the High Court, under this Section is not to be resorted to, if there is specific provision in the Code, for efficacious redress of the grievance of the aggrieved party. As aforementioned, if the petitioner felt that the investigation has not been properly done, after the service of referred charge sheet, he can invoke Section 200 Cr.P.C., to deal with the person, who offended his right, by forging a document or to safeguard his civil right, he can move the civil forum for appropriate relief.

11. When alternative remedy is available to the petitioner, to work out his remedy, invoking the inherent power under Section 482 Cr.P.C., ordering reinvestigation, is not possible and in this view of the matter, I find no merit in this petition and the same is liable to be dismissed.

In the result, the petition is dismissed.

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Kamaraj Salai, Chennai-4.

3. The Superintendent of Police,
Dindigul District, Dindigul.

4. The Inspector of Police,
District Crime Branch,
Dindigul.

5. The Public Prosecutor,
High Court, Madras.